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January 13, 2017

Federal Election Commission  
Jeff S. Jordan, Assistant General Counsel  
Office of Complaint Examination  
and Legal Administration  
999 E. Street, N.W.  
Washington, DC 20463

OFFICE OF GENERAL  
COUNSEL

Re: MUR 7123

Dear Mr. Jordan:

We write as counsel to Jay Inslee for Washington ("Respondent"), in response to the complaint filed by the Washington State Republican Party on August 11, 2016 (the "Complaint"). The Complaint incorrectly claims that Respondent violated 52 U.S.C. § 30125(f)(1) and 11 C.F.R. § 300.71 by engaging in Federal election activity with nonfederal funds. Because the Complaint fails to set forth a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), or Federal Election Commission ("FEC" or "Commission") regulations, the Commission should find no reason to believe a violation occurred and promptly dismiss the Complaint.<sup>1</sup>

Respondent served as Governor Jay Inslee's nonfederal campaign committee during the 2016 gubernatorial election in Washington state. On August 2, 2016, Respondent produced a television advertisement in support of Governor Inslee's re-election.<sup>2</sup> Responding to attacks levied at Governor Inslee in a previous ad sponsored by his opponent, Bill Bryant, the ad in question spent the first twenty-seven of its thirty seconds defending Governor Inslee and criticizing Mr. Bryant, with no discussion of any federal candidate. Concluding its criticism of Mr. Bryant, in the final three seconds of the ad, the voiceover says, "We all know who Bill Bryant is supporting for President," while the screen displays pictures of Bryant and Donald J. Trump, and a chyron reading: "Bill Bryant and Donald Trump Wrong for Washington."<sup>3</sup> The Complaint claims that because the advertisement expressed "opposition" to Mr. Trump, and because Respondent raised funds outside "the limitations, prohibitions and reporting requirements of the [Act]," Respondent violated the Act's restrictions on financing Federal election activity.<sup>4</sup>

Past Commission action does not support the Complaint's claim of a violation. First, "the mere identification of an individual who is a Federal candidate does not automatically promote,

<sup>1</sup> Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, Matter Under Review 4960 (Clinton for U.S. Exploratory Committee) (Dec. 21, 2000).

<sup>2</sup> Inslee for Washington, *Team*, Youtube.com, available at <https://www.youtube.com/watch?v=SSsHNXJXJV4>.

<sup>3</sup> *Id.* at :27.

<sup>4</sup> See Compl. at 3.

support, attack, or oppose that candidate.”<sup>5</sup> When Congress enacted current section 30125(f)(1), its principal sponsor explained that “spending non-Federal money to run advertisements that . . . say they identify with a position of a named Federal candidate” is not prohibited unless the ads in fact support, attack, promote, or oppose that federal candidate.<sup>6</sup> Accordingly, in Advisory Opinion 2003-25 (Weinzapfel), the Commission held that an Indiana local candidate may spend nonfederal funds “to capitalize on Senator Bayh’s name recognition and popularity in Evansville,” so long as the ad did not promote or support Bayh’s own candidacy.<sup>7</sup>

Similarly, in Matter Under Review 6113 (Hollingsworth) the full Commission could not agree to enforce section 30125(f)(1) against a state candidate whose communication said that presidential candidate John McCain was “ready to lead,” that the state candidate was “behind John McCain,” that “Barack Obama’s liberal policies are bad for America,” and that “Sarah Palin is the breath of fresh air we need.”<sup>8</sup> Three Commissioners recognized that the ad “can be interpreted as simply promoting the candidacy of the State candidate” and hence did not run afoul of the so-called “PASO” standard, which, as they noted, “remains undeveloped.”<sup>9</sup> Finally, in Matter Under Review 6019 (Caserta), the full Commission exercised its prosecutorial discretion to dismiss a complaint against a California State Assembly candidate whose 2008 mailer repeatedly referred to Barack Obama and Hillary Clinton, described both candidates as “outstanding,” and acknowledged the state candidate’s support for then-Senator Obama, all because the amount of funds involved was minimal.<sup>10</sup>

The ad at issue here raises these same issues. First, the ad is plainly directed toward electing Governor Inslee and defeating Mr. Bryant. It fails to mention Mr. Trump for the first twenty-seven of its thirty seconds. Even then, it uses Mr. Trump solely as a vehicle to disqualify Mr. Bryant. The voiceover notes simply that Mr. Bryant supported Mr. Trump. In its context, the “Wrong for Washington” chyron conveyed that Mr. Bryant and Mr. Trump’s mutual embrace

<sup>5</sup> See, e.g., FEC Adv. Op. 2003-25 (Weinzapfel), FEC Adv. Op. 2007-13 (Holt).

<sup>6</sup> 148 Cong. Rec. S2143 (Mar. 20, 2002).

<sup>7</sup> *Id.*

<sup>8</sup> Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter and Donald F. McGahn, Matter Under Review 6113 (Hollingsworth) (Dec. 18, 2009).

<sup>9</sup> *Id.* at 5, 7 (internal quotations omitted).

<sup>10</sup> Factual and Legal Analysis, Matter Under Review 6019 (Caserta) (Mar. 19, 2009). The Commission’s Factual and Legal Analysis suggested that, because the Caserta committee was not federally registered, its funds did not constitute “federal funds” and hence implicated the section 30125(f)(1) restrictions regardless of source or amount. See *id.* at 5. Yet this suggestion, which the Commission did not fully explain, is in tension with other situations in which the Commission has permitted non-political committees to use reasonable accounting methods to identify and spend federally-permissible funds on Federal election activity. See, e.g., 11 C.F.R. § 300.36(a) (permitting groups of nonfederal candidates to use a reasonable accounting method to identify federal funds when paying for Federal election activity).

was a reason to vote against Mr. Bryant—in contrast with Governor Inslee, who was supported by sheriffs, police and state troopers.<sup>11</sup>

Finally, the claim that Respondent paid for the ad with federally-prohibited funds is sheer speculation and unsupported by any fact. The amount limitation on contributions from individuals to Respondent was lower than the federal limit—only \$2,000.<sup>12</sup> While Washington State allowed Respondent to accept contributions from other sources within that same limit, and from party organizations in larger amounts, even a cursory review of Respondent's reports filed with the Washington State Public Disclosure Commission shows that it received ample funds - from federally-permissible sources and in federally-permissible amounts with which to pay for the ad.<sup>13</sup>

The ad's evident purpose of electing Governor Inslee and defeating Mr. Bryant, the brevity and context of its reference to Mr. Trump, the fact that the sponsor had federally-permissible funds on hand with which to pay for the ad, and the lack of Commission enforcement history against similar nonfederal ads all counsel toward a finding that there is no reason to believe that Respondent violated the Act. We respectfully ask the Commission to find accordingly, close the file and take no further action.

We appreciate the Commission's consideration of this response.

Very truly yours,



Brian G. Svoboda  
Courtney Weisman  
Counsel to Respondents

<sup>11</sup> The Commission has repeatedly declined to find reportable independent expenditures in analogous communications that were plainly crafted to support the state candidates. See Matter Under Review 6019 (Caserta); Matter Under Review 6113 (Hollingsworth).

<sup>12</sup> See *2016-17 Contribution Limits*, Public Disclosure Commission, available at [https://www.pdc.wa.gov/sites/default/files/campaign-contribution-limits/LimitsChart\\_0.pdf](https://www.pdc.wa.gov/sites/default/files/campaign-contribution-limits/LimitsChart_0.pdf).

<sup>13</sup> Respondent's reports can be accessed at <http://web.pdc.wa.gov/MvcViewReports/Candidate/sw.candidates?year=2016&form=ALL>. See also FEC Adv. Op. 2007-26 (Schock) (permitting use of reasonable accounting method to identify federally permissible funds).